

In re: Balboa Street Beach Club, Inc.
Case No.: 04-25508-BKC-RBR

THIS CAUSE came before the Court on a creditor's motion to dismiss the Chapter 11 case, alternatively, for relief from the automatic stay, and to impose sanctions. The Creditor asserted that the Debtor filed the Chapter 11 proceeding, which is essentially a single asset real estate case, in bad faith. The Creditor suggests to this Court that the timing of Debtor's filing, coupled with Debtor's motion to reject the executory contract with the Creditor, evidences an intent to delay or frustrate the legitimate efforts of the Creditor in enforcing its rights. The Court found that the critical distinction between this case and those most often associated with single asset real estate cases is that the fundamental dispute driving this case is not with a secured lender looking to foreclose upon a piece of property lacking equity on the eve of foreclosure, but is rather with a rejection of an executory contract. This Court found that under a Phoenix Piccadilly analysis the Debtor's Petition was still filed in good faith. The Court in this case found no "bad faith" in bringing this bankruptcy case solely for the purposes of rejecting an overly burdensome executory contract.